

**REMARKS**

Applicant has carefully studied the Final Office Action of June 7, 2005, and offers the following amendments and remarks in response thereto.

Applicant appreciates the telephonic interview with Examiner Phunkulh on August 2, 2005 when several matters were discussed. Where appropriate, comments from the interview are included below and serve as the Interview Summary as required by the MPEP.

Claim 1 was objected to because of an informality. Applicant herein amends claim 1 to correct the error. No new matter is added, and Applicant requests withdrawal of the objection to claim 1.

Claims 4-6, 16, and 24 are amended to correct a few typographical errors. No new matter is added.

Before addressing the rejections, Applicant provides a brief summary of the present invention so that the remarks presented may be considered in the proper context. The present invention is designed to facilitate the use of multiple types of customer premises equipment with a single communication network. Specifically, the present invention provides a network interface unit that connects the customer premises equipment to the medium of the communication network. The customer premises equipment is described as data communication equipment (DCE) in the specification and is also described as a service delivery unit. On page 6, lines 5-7 of the specification, the service delivery unit is equated to the DCE of the specification. The network interface unit operates in a first format (the SDU format of Figure 3) to communicate with the service delivery units and a second format (the NTU format of Figure 3) to communicate with the medium of the communication network.

Claims 1-4, 6-14, 16-22, and 24-27 were rejected under 35 U.S.C. § 102(b) as being anticipated by Abensour et al. (hereinafter "Abensour"). Applicant respectfully traverses. For the Patent Office to establish anticipation, the Patent Office must show where each and every claim element is located in the reference. Furthermore, the elements of the reference must be arranged as claimed. MPEP § 2131.

During the telephonic interview, Applicant provided the summary of the present invention set forth above to the Examiner. Specifically, Applicant contrasted the service delivery units, which amount to customer premises equipment, from the Frame Relay 24 and the switched multimegabit data service (SMDS) 22 of Abensour, which are both network elements

outside of the customer premises. The Examiner requested clarification as to the formats recited in the claims, especially as related to the embodiment of Figure 3. As indicated above, in the embodiment of Figure 3, the first format of claim 1 corresponds to the SDU format of Figure 3, and the second format of claim 1 corresponds to the NIU format of Figure 3. Both formats are used by the network interface unit of claim 1. Based on this clarification, the Examiner preliminarily indicated that he saw the distinction between the invention and Abensour. In light of this indication, Applicant requests reconsideration of the rejection of claims 1-4 and 6-10. Applicant understands that this reconsideration may require a further search.

Like claim 1, independent claim 11 has the first and second formats and defines over Abensour for the same reasons as claim 1. Claims 12-24 and 16-19 depend from claim 11 and are allowable for the same reasons.

Claim 20 has the different service delivery units as well and defines over Abensour for the reasons set forth above. Claims 21, 22, and 24-27 depend from claim 20 and are allowable at least for the same reasons.

In light of the distinctions between the claims and Abensour, Applicant requests withdrawal of the § 102 rejection of claims 1-4, 6-14, 16-22, and 24-27 at this time.

Claims 5, 15, and 23 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Abensour. Applicant respectfully traverses. For the Patent Office to modify a reference in an obviousness rejection, the Patent Office must do two things. First, the Patent Office must articulate a motivation to modify the reference, and second, the Patent Office must support the articulated motivation with actual evidence. *In re Kotzab*, 217 F.3d 13654, 1370 (Fed. Cir. 2000). Even if the Patent Office provides a proper motivation, to establish *prima facie* obviousness, the Patent Office must show where each and every element of the claim is taught or suggested. MPEP § 2143.03.

Applicant initially traverses the rejection because the Patent Office has not properly supported the motivation to modify the reference. Specifically, the Patent Office asserts that the motivation to modify Abensour is "to take advantage of widely available and used technology." (Office Action of June 7, 2005, page 10, lines 14-15). This motivation is unsupported by evidence as required by the Federal Circuit. Since the motivation is not properly supported, the motivation is improper. Since the motivation is improper, the modification to Abensour is improper. Since the modification to Abensour is improper, the rejection based on the

modification is improper. Since the rejection is improper, Applicant requests withdrawal of the § 103 rejection at this time.

Even if the modification is proper, a point which Applicant does not concede, Applicant further traverses the rejection because the modification to Abensour does not teach the two formats recited in the claims, nor does the modification teach the family of service delivery units recited in the claims as explained above. Applicant requests withdrawal of the § 103 rejection for this reason as well.

Applicant requests reconsideration of the rejections in light of the remarks presented herein. Applicant earnestly solicits claim allowance at the Examiner's earliest convenience.

Respectfully submitted,

WITHROW & TERRANOVA, P.L.L.C.

By: 

Benjamin S. Withrow  
Registration No. 40,876  
P.O. Box 1287  
Cary, NC 27512  
Telephone: (919) 654-4520

Date: August 8, 2005  
Attorney Docket: 7000-414A

<b>CERTIFICATE OF TRANSMISSION</b>	
I HEREBY CERTIFY THAT THIS DOCUMENT IS BEING TRANSMITTED VIA FACSIMILE ON THE DATE INDICATED BELOW TO:	
Examiner: <u>Phunkulh, Bob A.</u> Art Unit: <u>2661</u> Fax: <u>571-273-8300</u>	
<u>REBECCA ROCKS</u>	_____ Name of Sender
<u>Rebecca Rocks</u>	_____ Signature
<u>8-8-05</u>	_____ Date of Transmission